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Mike Simonton
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Sent via USPS and email to Simonton@wapa.gov

Re: Tribal Consultation for Hoover Reallocations

Dear Mike,

I serve as a Special Counsel to the Havasupai Tribe and am submitting these comments on their behalf. These comments were presented in person at the August 28, 2012 tribal consultation meeting in Phoenix.

The Havasupai Tribe is a federally recognized tribe and will be applying for an allocation of Hoover Power.

At the August 28, 2012 tribal consultation meeting you presented an application and contracting process that make it impossible for the Havasupai Tribe to receive a Hoover Power allocation. As we discussed at the meeting, the impossibility results from the following proposed criteria:

- Western will consider existing Federal power resource allocations of the applicants
- The minimum allocation shall be 1,000kW. Aggregated entities shall satisfy this minimum.
- Aggregated groups must demonstrate to Western's satisfaction the existence of a contractual aggregation arrangement. Individual members of an aggregated group must individually and collectively meet eligibility requirements.

Havasupai Tribe

The Havasupai Tribe and the reservation residents receive power from the Bureau of Indian Affairs who is a customer of Mohave Electric Cooperative. All power from

Mohave goes through a single meter on the reservation at Long Mesa. According to preliminary numbers from the BIA records, usage in 2011 was:

Year	Total Annual KWH	Average Monthly KWH	Average KW Demand	Peak KW Demand
2011	10,292	262,425	643	924

The Tribe has a benefit-credit agreement with Navajo Tribal Utility Authority for CRISP Power. I do not have the specifics, but under the proposed criteria this allocation will affect their allocation of Hoover Power.

Minimum Allocations and Aggregated Groups

First, an aggregated group of tribes or other eligible entities is not an Indian Tribe. The Inter Tribal Council of Arizona, for example, is not an eligible Indian Tribe under the Hoover Power Act. The Act requires that Western contract directly with Indian Tribes. (16 U.S.C. §619a (a)(2)(C)(ii), "Schedule D contingent capacity and firm energy allocated to federally recognized Indian tribes shall be contracted for directly with Western.")

The number of parties necessary to aggregate to form a group to meet the 1,000 kW minimums cannot be determined until each potential party has an allocation. Western indicated it will allocate power from the Schedule D pool for new entities based on load with proportional reductions depending on the number of applicants and with deductions for all applicants with existing Federal power resource allocations. A potential tribal applicant will not know the other Parties needed to aggregate to reach the 1,000kW minimum until after Western makes the power allocations.

Given the 1,000kW minimum requirement, an applicant with a load of more than 1,000kW may not receive an allocation if the deductions by Western reduce the allocation to below the minimum. This hypothetical tribal applicant would not know of the need to aggregate with a group, until it was too late to do so.

There are impossibilities to forming an aggregate group at the application stage for tribes such as Havasupai who will apply for less than 1,000kW. According to the Western proposal, an aggregated group must have a valid agreement among the parties that forms an entity with whom Western can contract. In order to be a valid contract which a tribal governing body can approve, the agreement must include assignment of the individual Hoover power allocations to the new entity; describe how the parties will share benefits and how they will take delivery. This is not possible without a power allocation. The Havasupai Tribe, acting through its Tribal Council cannot approve a contract without knowing these basic terms.

If the 1,000kW minimum is a requirement, which the Havasupai Tribe do not concede is necessary, allocations must be made prior to forming aggregated groups. Some tribes may choose to enter benefit-credit or bill-credit agreements with an existing Western customer and satisfy the minimum allocation requirement without joining an aggregated group. However, these contracts cannot be made without an allocation.

Suggested Process

Allocations and contracting are two separate processes with different criteria and different statutory deadlines. The Act states:

> "Within 36 months of December 20, 2011, the Secretary of Energy shall allocate through [Western], for delivery commencing October 1, 2017, for use in the marketing area for the Boulder City Area Projects 66.7 percent of the Schedule D contingent capacity and firm energy to new allottees that are located within the marketing area for the Boulder City Area Projects and that are—
>
> (I) ....
>
> (II) federally recognized Indian tribes. (16 U.S.C. §619a(a)(2)(C)(i))

Tribal allocations should be made based on load and other criteria which are published and available prior to the application deadlines. The allocations need to be in kW increments to serve the largest number of potential tribal applicants. To do otherwise violates and defeats the purpose of the Hoover Power Act as this Act applies to Tribes.

If there are operational requirements that prevent delivery in less than 1,000kW increments (which the Havasupai Tribe does not concede), the recipients of an allocation should be given until the contracting deadline to meet those requirement.

Hoover Power contracts must be revised to comply with the Act and accommodate the new customer base of Indian Tribes.

It is the obligation of Western to establish a process that complies with the Hoover Power Act to permit contracts with Tribes. The most recent information provided at the tribal consultation meetings falls far short of meeting this obligation.

Sincerely,

Margaret

Margaret J. Vick

cc:
Don Watahomigie, Chairman
Matthew Putesoy, Sr., Vice Chairman
Members of Havasupai Tribal Council

Douglas N. Harness
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